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**Conference Room Paper on the Doctrine of Discovery
11th Session of the UN Permanent Forum on Indigenous Issues**

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Abstract

This Conference Room Paper addresses the theme of the 11th Session of the UN Permanent Forum on Indigenous Issues: “The Doctrine of Discovery: Its continuing impacts on Indigenous Peoples and Redress for Past Conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples)”. An overly narrow and limited focus on the term “discovery” misses a deeper point about the domination and dehumanization of Indigenous nations and peoples, and violence against Indigenous women, all of which are illustrated by the document *Dum diversas* issued by the Holy See in 1452. The language of the papal bull issued by Pope Nicholas V to King Alfonso V of Portugal purported to authorize the king to “invade, capture, vanquish, and subdue. . .all Saracens and pagans, and other enemies of Christ. . .to reduce their persons to perpetual slavery. . .and. . .to take away all their possessions and property.” In such language we find all the conceptual and behavioral “seeds” of present day domination and dehumanization that are being alluded to by the phrase “continuing impacts on Indigenous Peoples.” What has impacted and continues to impact Indigenous nations and peoples is not “discovery,” but the centuries of domination and dehumanization of originally free peoples throughout the world. The term “doctrine of discovery” alludes to the *search* by dominating monarchies of Western Christendom, during the so-called ‘Age of Discovery,’ for non-Christian lands and peoples that had not yet been forced under a regime or condition of domination in Africa, Asia, the Americas, and Oceania. The resulting patterns and regimes of domination have manifested past and present abusive and deadly violence against Indigenous women.

Introduction

1. The theme for the 11th Session of the UN Permanent Forum on Indigenous Issues is: “The Doctrine of Discovery: Its continuing impacts on Indigenous Peoples and Redress for Past Conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples).” This Conference Room Paper is intended to accomplish several goals.
 - To point out that an overly narrow and limited focus on the term “discovery” results in missing the deeper point about the dehumanization and domination and Indigenous nations and peoples.
 - To demonstrate that domination and dehumanization have been and continue to be global in scope and have had destructive impacts on Indigenous nations and peoples for more than five centuries in every region of the world, and continue to do so;
 - To introduce the concept of Indigenous Intemporal Law as a counterpoint to European Intertemporal Law (“the lawfulness of an action must be determined according to the law existing at that time and not according to the law when a subsequent dispute arises.”)
 - To critique the concept of “conquest” by recognizing that the term “past conquests” in the UNPFII subtheme is a synonym for “past dominations.”
 - To argue that those who today apply archaic Christian European concepts and standards to Indigenous nations and peoples ought to be called upon to identify any basis upon which originally free and independent nations and peoples may be legitimately considered subject to such concepts and standards without their permission.
2. This paper expands upon the 2010 Preliminary Study on the Doctrine of Discovery submitted to the 9th Session of the UNPFII by Ms. Tonya Gonnella Frichner (Onondaga Nation), then the North American Representative to the UNPFII.¹ In particular, this paper expands upon “The Framework of Dominance”² in the Preliminary Study on the Doctrine of Discovery.

The International Arena and Indigenous Nations and Peoples

3. Behind the phrase “Doctrine of Discovery” is an international problem of domination and dehumanization³ that has proven terribly destructive for Indigenous peoples throughout the globe. This problem has not been adequately addressed by the United Nations during the past

¹ E/c.19/2010/13. The report is titled, “Impact on Indigenous Peoples of the International Legal Construct known as the Doctrine of Discovery, which has served as the Foundation of the Violation of their Human Rights.” Hereinafter called “Preliminary Study.” Steven Newcomb (Shawnee/Lenape)(Indigenous Law Institute), Faith Keeper Oren Lyons (Onondaga Nation), and Peter d’Errico (Professor Emeritus UMass Amherst) also assisted with the drafting and editing of the Preliminary Study on the Doctrine of Discovery.

² E/c.19/2010/13. Preliminary Study, p. 4, footnote 2.

³ Domination and dehumanization are forms of violence inflicted on peoples termed “Indigenous,” and are, in part, the result of what might be termed “conceptual violence,” which results in behavioral violence. This is particularly evident in the dominating and dehumanizing treatment of Indigenous women, and of women generally throughout the world. See Valerie Taliman’s 5 part 2010 series on Murdered and Missing Aboriginal Women in Canada: <http://indiancountrytodaymedianetwork.com/2010/09/01/national-call-for-inquiry-into-deaths-of-hundreds-of-native-women-18321>.

several decades of work regarding Indigenous peoples, with the exception of the 2010 Preliminary Study of the Doctrine of Discovery.⁴

4. The Doctrine of Discovery has been defined as ‘the first discovery by Europeans of non-European lands,’ but such a phrasing is historically inaccurate.⁵ A close reading of documents from the fifteenth and later centuries reveals what scholars have termed the international law “common to all the nations of Christendom.”⁶

5. Christian Europeans ‘saw’ the world as divided between ‘Christendom’ and ‘heathendom.’ Thus, the Doctrine of Discovery is more accurately expressed as: “The first ‘discovery’ by Christian

⁴ E/c.19/2010/13. The preliminary study was the result of a realization, after nearly two decades of dialogue, that the Doctrine of Christian Discovery had never been a central focus of the international work regarding the rights of Indigenous nations and peoples. That dialogue was initiated by the Indigenous Law Institute (ILI), which was founded in 1992 by Steven Newcomb (Shawnee/Lenape) and Birgil Kills Straight (Oglala Lakota) as the start of a global campaign to call upon Pope John Paul II to formally revoke the Inter Caetera papal bull of 1493. Also active in the dialogue and efforts to deal with the issue are the Haudenosaunee, the American Indian Law Alliance, the Seventh Generation Fund, and Tonatierra. In 1992, Mr. Newcomb delivered information about the Doctrine of Christian Discovery and the papal bulls to Faithkeeper Oren Lyons (Onondage Nation) and the Traditional Circle of Elders and Youth. The Haudenosaunee, the American Indian Law Alliance, the Seventh Generation Fund, and Tonatierra have all been actively involved with publicizing the issue since 1992. In 1993, the ILI wrote an open letter to Pope John Paul II calling for a revocation of the papal bull of May 4, 1493. See Patrick Thornberry, *Indigenous Peoples and Human Rights*, 2002, p. 65. The ILI letter to the pope is mentioned and quoted.

⁵ See e.g., Robert T. Coulter and Steven M. Tullberg, “Indian Land Rights,” in *The Aggressions of Civilization*, 185, 190 (Sandra L. Cadwalder and Vine Deloria, Jr. eds., 1984). “The doctrine of discovery came into existence with the rapid expansion of European empires in the fifteenth century. Its basic tenet—that the European nation which first ‘discovered’ and settled lands previously unknown to Europeans, thereby gained the exclusive right to acquire those lands from their occupants—became part of the early body of international law dealing with aboriginal peoples.” Notice no mention of the historical accurate context Christendom and the distinction in the documents of that time between Christians and non-Christians. See generally Steven T. Newcomb, *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery*, Golden: Fulcrum, 2008.

⁶ Preface to the Third Edition of Wheaton’s *Elements of International Law*, p. x, Wheaton wrote: “During the Middle Ages the Christian States of Europe began to unite and to acknowledge the obligation of an international law common to all who professed the same religious faith.” Also at p. xi, “Each general council of the Catholic Church was a European Congress, which not only deliberated on ecclesiastical affairs, but also decided the controversies between the different States of Christendom. The professors of the Roman law were the public jurists and diplomatic negotiators of the age. The writers of the law of nations before the time of Grotius, such as Francis de Victoria, Balthazar, Ayala, Conrad Brunus, and Albericus Gentilis, fortified their reasonings by the authority of the Roman civilians and the canonists. The great religious revolution of the sixteenth century undermined the bases of this universal jurisprudence: but the public jurists of the Protestant school, whilst they renounced the authority of the Church of Rome and the canon law, still continued to appeal to the Roman civil law, as constituting the general code of civilized nations.” At p. xv, Wheaton wrote in his Preface that he had “especially sought for those sources of information in the diplomatic correspondence and judicial decisions of our own country, which form a rich collection of collective examples, arising out of the peculiar position of the United States during the wars of the French Revolution, and during the war declared by them against Great Britain in 1812. That international law, common to all civilized and Christian nations, which our ancestors brought with them from Europe, and which was obligatory upon us whilst we continued to form a part of the British Empire, did not cease to be so when we declared our independence of the parent country. Its obligation was acknowledged by the Continental Congress. . . The American government...continues to observe the preexisting rules of the ancient law of nations. . .” Found in *Lawrence’s Wheaton, Elements of International Law*, Second Annotated Edition, by William Beach Lawrence, London: Sampson Low, Son and Co., 1864.

people of non-Christian lands, and the subsequent assertion of Christian sovereignty or territorial dominion.”⁷ This is why the most accurate term from an Indigenous perspective is ‘Doctrine of Christian Discovery and Domination.’⁸

6. Evidence of the domination of Indigenous nations and peoples is found in centuries of colonization, massacres, racism, removal, ethnocide, genocide,⁹ and linguicide (effort to kill Indigenous languages), and violence against and abuse of Indigenous women. Traditional economies and lifeways have been disrupted or destroyed. Any comprehensive discussion of Indigenous peoples’ issues is most sensibly framed in terms of these centuries of colonialism¹⁰ and imperialism¹¹ and their contemporary consequences.¹²

7. On August 14, 1941 U.S. President Franklin Delano Roosevelt and United Kingdom Prime Minister Winston Churchill signed the Atlantic Charter. The two governments stated that “they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.” The language of the Atlantic Charter helped set the stage for the era of international decolonization and self-determination after World War II, as a counterbalance to centuries of colonialism and domination.¹³

8. At the close of WWII some 500 million people in the world were considered “Indigenous” or “colonized peoples” who were entitled to undergo ‘decolonization’ through the processes of the United Nation Decolonization Commission. In the 1960s and 1970s many such peoples achieved independent statehood as an exercise of self-determination consistent with Chapter 1, Article 1, part 2 of the Charter of the United Nations: “To develop friendly relations among

⁷ See footnote 5 *supra*.

⁸ See Rene Maunier, *The Sociology of Colonies: An Introduction to the Study of Race Contact*, London: Routledge & Kegan Paul Ltd., Book II, Chapter IV, “Domination.” “The doctrine of domination is what we call Imperialism. It is the state of mind, individual or collective, which desires to rule others...” p. 29. “On the one side some people assert that certain races have the *right* and the *duty* to dominate others; this is the authoritarian point of view. On the other side some contend that certain people are interested in dominating for the *interest* and advantage of the whole world, that universal civilization gains from the domination over others of certain peoples; this is the utilitarian point of view.” pp. 29-30. (The author was a member of the French Academy of Colonial Sciences).

⁹ For example, some 60% of the Indians of California were wiped out in a ten year period in the mid-nineteenth century according to historian David Stannard. <http://www.youtube.com/watch?v=Qra6pcn4AOE>

¹⁰ See generally *The Sociology of Colonies*.

¹¹ See note 18 *infra*.

¹² See “State of the World’s Indigenous Peoples,” 2009, United Nations, Sales No. 09.VI.13.

¹³ The term “self-determination” was coined in the early twentieth-century 1900s, and became popularized during the era of the League of Nations. In an essay titled, “Self-Determination,” written during the League of Nations era, Hindu mystic Sri Aurobindo referred to “the luminous description of liberty as the just power, the freely exercised right of self-determination.” In Sri Aurobindo, *The Human Cycle, The Ideal of Human Unity, War and Self-Determination*, Pondicherry: Sri Aurobindo Ashram, 1971, p. 598. Domination was a key theme of Aurobindo’s essay. He said, for instance, that “the glorious possession of liberty by the community has been held to be consistent with the oppression of four-fifths or three-fifths of the population by the remaining fraction, so it [liberty] has till lately been held to be quite consistent with the complete subjection of one half of mankind, the woman half, to the physically stronger male. The series continues through a whole volume of anomalies, including of course the gloriously beneficent and profitable exploitation of subject peoples by emancipated nations who, it seems, are entitled to that domination by their priesthood of the sacred cult of freedom.” p. 600. The Atlantic Charter became part of the basis for the formation of the United Nations in 1945.

nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." Article 1 in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both read: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

9. During the 1960's and 1970s American Indian nations and peoples in the context of the United States were deeply disenchanted with the conceptions and conditions of colonialism built into U.S. federal Indian law and policy. This led to an intellectual and political activism for recognition of their inherent rights of sovereignty and self-determination. In 1974, American Indian nations at the Standing Rock Reservation in South Dakota issued a "Declaration of Continuing Independence",¹⁴ and three years later Indigenous nations' and peoples' representatives attended an international conference in Geneva, Switzerland to advocate for the recognition of the sovereignty and self-determination of Indian nations and for the collective and human rights of Indigenous peoples.¹⁵
10. Since the 1960's, Indigenous scholarship has been a key part of the global Indigenous peoples' movement for human rights and self-determination. From the mid-1960s until his passing in 2005, Vine Deloria, Jr. a Standing Rock Sioux attorney, theologian, and distinguished history professor became an inspiration for a generation of young Indigenous activists and scholars in the U.S. context.¹⁶ Deloria's example and the findings of his research resulted in many Indian people delving more deeply into the history of what had happened to our nations and peoples.
11. The revelations that emerged from decades of scholarship by Indigenous peoples are akin to a coma patient waking up and slowly becoming reoriented. The scholarship has resulted in a more insightful understanding of the *religious thinking* and greed that caused the centuries of death, racism, and colonization, the traumatic aftermath of which we still live with to this day. This discussion of the Doctrine of Christian Discovery and Domination is part of our effort to rethink from an Indigenous perspective the basic conceptual framework by which we understand the pressing issues faced by Indigenous nations and peoples today.
12. Decades of historical research have provided us with a global framework of analysis that includes the history of Indigenous peoples in the Canary Islands, Africa, Asia, Australia, and Oceania, as well as Northern Europe.

¹⁴ "Declaration of Continuing Independence By the First International Indian Treaty Council," 1974, <http://www.indybay.org/uploads/2007/12/21/declarationofcontinuingindependence.pdf>

¹⁵ Sharon Venne's, "Road to the United Nations and Rights of Indigenous Peoples," Griffith Law Review, Vol. 20, No. 3, 2011, pp. 559-60, and pp. 563-64.

¹⁶ See for example, Vine Deloria Jr., *Behind the Trail of Broken Treaties: An Indian Declaration of Independence*, 1974.

13. Our research reveals that domination and dehumanization were written into numerous documents issued by the Holy See,¹⁷ and into treaties between Christian monarchs and between states. The resulting devastation is still evident today in the oppression experienced by Indigenous nations and peoples across the planet.¹⁸ In the United States, we see contemporary evidence of this thinking in recent U.S. Supreme Court rulings such as the 2005 decision *City of Sherrill v. Oneida Indian Nation of New York*, in which the Court cited the “doctrine of discovery” as central to its decision.¹⁹ This means that the doctrine of Christian discovery found in *Johnson v. M’Intosh* was also part of the basis for the 2005 City of Sherrill ruling by the U.S. Supreme Court.²⁰

The Early Model of the Will to Dominate non-Christian Nations and Peoples and their Lands

14. Western Christendom’s colonial efforts provide an early model of the Christian will to dominate non-Christian lands.²¹ This was part of a movement toward ‘globalization,’²² an

¹⁷ See Francis Gardiner Davenport, *European Treaties Bearing on the History of the United States and Its Dependencies to 1648*. Washington, D.C.: Carnegie Institution, 1917, pp. 1-117. See “Preliminary Study” pp. 5-8 for specific quotes from the papal documents.

¹⁸ Gerard Colby and Charlotte Dennett, *Thy Will Be Done: The Conquest of the Amazon: Nelson Rockefeller and Evangelism in the Age of Oil*, 1996 (out of print).

¹⁹ *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005). “Under the ‘doctrine of discovery,’ *County of Oneida v. Oneida Indian Nation of N. Y.*, 470 U.S. 226, 234 (1985) (*Oneida II*), ‘fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign—first the discovering European nation and later the original States and the United States,’ *Oneida Indian Nation of N. Y. v. County of Oneida*, 414 U.S. 661, 667 (1974) (*Oneida I*).” Some scholars are of the view that “fee title to the lands occupied by Indians” is referring only to a right to purchase an Indian “title of occupancy” if and when the Indians were willing to sell. What this interpretation ignores, however, is the text “vested in the sovereign—first the discovering European nation and later the original States and the United States.” In his article, “Original Indian Title,” (Minn. Law Rev. Vol. 32:28) the eminent legal scholar Felix Cohen wrote a subheading “The Sovereign’s Title: *Johnson v. M’Intosh*.” What Cohen termed “the sovereign’s title” was predicated on the doctrine of “effective occupation,” which is merely a euphemism for “effective domination” by the first Christian “discoverer.” This was behind the U.S. Supreme Court’s statement regarding “ultimate dominion.” (domination) The U.S. Supreme Court said: “While the different nations of Europe respected the right of the natives, as occupants, they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. These grants have been understood by all, to convey a title to the grantees, subject only to the Indian right of occupancy.” What is behind Cohen’s mention of “the sovereign” is found in the papal bull of May 3, 1493: “*dominorum Christianorum*,” “Christian dominator.” Thus, “the Sovereign’s title” is “the Dominator’s title.”

²⁰ To get a better of sense of the thinking behind this see paragraphs 17 and 18 and accompanying footnotes.

²¹ *The Sociology of Colonies*, “Imperialism very early took on a mystic tinge, and allied itself to the idea of *election*, the idea of a mission. The dominating race is a chosen race, chosen by God, which has received from Him the mission to command, not by any means in its own interest alone, but in the interests of God’s work. The theological idea found, as we shall see, reinforcement from a biological conception, from the idea of *selection* which was soon absorbed into imperial mysticism.” Maunier continues by stating that according to “Anglo-Saxon doctrine, the conception of the State is therefore active and expansive. The function of the State is. . .the domination of ‘inferior’ or ‘backward’ peoples. The aim of the collective organism which we call Empire is to ensure this domination by the people designed by God, over peoples destined to submit to its power.” pp. 30-31.

²² Alain Supiot, *Homo Juridicus: On the Anthropological Function of the Law*, 2007, p. 185: “What we call globalization is not a radically new phenomenon but the latest stage in a process that has lasted several centuries, and which can be traced to the Renaissance and the conquest of the New World. From the extermination of

effort to span the globe, claiming superiority and overlordship.²³ As B. A. Hinsdale wrote in an 1888 essay, “The Right of Discovery,” “The great geographical discoveries of the fifteenth and sixteenth centuries led to two series of remarkable changes in the relations of the principal nations of Western Europe. First, those nations were brought into contact with the natives of the newly discovered lands, east and west, all of whom were heathen....” [non-Christian].²⁴

15. Hinsdale cites Francis Lieber as declaring: “The general feeling, however, was especially at the earlier times, that paganism, which meant not being baptized, deprived the individual of those rights which a true jural morality considers inherent in each human being. The fact of being baptized or not being baptized determined a claim to the commonest rights, nay more, to mere sympathy with bodily suffering.”²⁵ Hinsdale also quotes Wheaton as saying: “According to the European ideas of that age, the heathen nations of the other quarters of the globe were the lawful spoil and prey of their civilized conquerors.”²⁶
16. Hinsdale adds that “titles which began in *violence* have been confirmed and strengthened, and in a new sense purged, by that form of presumption arising from the lapse of time which the script-writers call prescription.”²⁷ (emphasis added) He continues: “The constant and approved practice of nations shows...‘that. . .the uninterrupted possession of territory, or other property, for a certain length of time, by one state, excludes the claim of every other.’”²⁸
17. Hinsdale points out how Christians worked conceptually to exclude non-Christians from the benefit of Christian legal rules of dominion²⁹ and land ownership: “[P]rescription, which would

America’s indigenous population until today, this process has gone hand in hand with the *domination* of Western countries over all others.” (emphasis added)

²³ A Latin word for lord is *dominus*, “He who has dominated,” Thus, the term “over” in “overlordship” invokes the “the Lord’s” successful domination.

²⁴ B.A. Hinsdale, “Right of Discovery,” in *Ohio Archæological and Historical Review*, Vol. II, No. 3, 1888, p. 349.

²⁵ *Ibid.*, p. 352. See also, Francis Lieber, “Contributions to Political Science,” Vol. II of *Miscellaneous Writings*, 1881, pp. 22-34. “The idea that Christianity formed a part of humanity, and that paganism or the fact of not being baptized, already mentioned, established a non-jural state, or an existence *sine jure*, led to the conception of the Right of Discovery, one of the most interesting subjects in the whole history of law...Discovery in what we will call here for brevity’s sake the Spanish sense of the word, meant the first visit of a Catholic to an island or country not peopled at all or peopled by non-Christians, whom it was perfectly fair to conquer or subdue [dominate] by any means, in which not even the lowest animal sympathy had play.” P. 26. Lieber further states: “The idea of Christian right over all non-Christians, and the sovereignty over the whole earth claimed by the Pope, led Alexander VI., the evil-famed Borgia, to divide the globe by the famous line [of demarcation]. The English and the Americans have not wholly discarded the idea that the white man, at least, if not the Christian, is entitled to this earth, if not *cultivated* by the occupier. So our Supreme Court decided by an opinion of the Chief Justice of the United States.” P. 27. By this last statement Lieber was referring to *Johnson v. M’Intosh* 21 U.S. (8 Wheat.) 543 (1823). The *Johnson* ruling has been also cited by the court systems in Canada, Australia, and New Zealand.

²⁶ Hinsdale, “Right of Discovery,” p. 352.

²⁷ *Ibid.*, p. 350.

²⁸ *Ibid.*, p. 351.

²⁹ It is interesting that Francisco de Vitoria is cited as having reasoned that the Indian did have dominion and ownership of their lands from a public and private standpoint. Yet, Anthony Anghie concludes that Vitoria was concerned with “the problem of order among societies belonging to two different cultural systems. Vitoria resolves this problem by focusing on the cultural practices of each society and assessing them in terms of the universal law of *jus gentium*. Once this framework is established, he demonstrates that the Indians are in violation of universal

have given the original inhabitants of the newly discovered lands, at least the most advanced of them, the territories that they occupied, was strictly limited to Christian powers. The rule had no application whatever to infidels of either east or west.”³⁰ He concludes that, “To the mind of Christian Europe in the fifteenth century the distinction between Christian and Infidel was ineffaceable.”³¹

18. As an example, we can look at the Canary Islands. In 1402, Lord “Jean de Bethencourt, having conceived the project of conquering the Canaries,..went to ask the help of the king of Castile, to whom he made homage of the islands. The king conceded to him the sovereignty of the islands.”³² In keeping with the concept of prescription, the long possession of the Canary Islands by the Guanches ought to have excluded all others from claiming and assuming domination over their lands without their permission, but, as noted above, the Christians quite conveniently deemed prescription to be “strictly limited to Christian powers.” What non-Christian Guanches might have thought or said was not even a consideration in the talks between Bethencourt and the king of Castile (later Spain). This example, then, is a template for understanding how the same dehumanizing pattern played out in other regions of the globe.
19. Thus, it is within the context of *religious* thinking (categorization) that a clear picture of the Christian Doctrine of Discovery and Domination emerges. Christian monarchs described their own efforts to assume Christian *dominium* (right of domination) over distant heathen and infidel (non-Christian) lands as laudable and praiseworthy, undertaken for the honor and enrichment of their own kingdoms and for all of Christendom.
20. Looking back to the time when the explicit use of such religious categories prevailed, we are able to understand the depth and tenacity of conceptual patterns and narratives that, now typically expressed with a *secular gloss*, give rise to the experiences and issues faced by Indigenous nations and peoples today.

natural law.” p. 28. Anghie then states that “ultimately, the one distinction which Vitoria insists upon and which he elaborates in considerable detail is the distinction between the sovereign Spanish and the non-sovereign Indians. Vitorica bases his conclusions that the Indians are not sovereign on the simple assertion that they are pagan. In so doing he resorts to exactly the same crude reasoning which he had previously refuted when denying the validity of the Church’s claim that the Indians lack rights under divine law because they are heathen.” p. 29. In *Imperialism, Sovereignty, and the Making of International Law*, 2004, Cambridge University Press.

³⁰ Ibid.

³¹ Ibid., p. 352.

³² Edgar Prestage, *The Portuguese Pioneers*, London: A & C Black, 1933. The Portuguese also argued that “as the Canaries had not been occupied by any Catholic prince, the King of Portugal injured no one by taking possession of them.” pp. 44-45. The thinking behind this was that the islands had no *Christian* owner. The islands were considered to have no sovereignty because they were not under the claimed rule of any Christian sovereign. In 1436, Pope Eugenius IV “sent a bull to King Duarte of Portugal, setting out that he had granted him the conquest of the Canaries because the King had declared that no Christian had a right to them [as of yet]...” p. 45. King John II of Castile responded by complaining to the pope “on the ground that the conquest belonged to him. The Pope replied that he had no intention of infringing on his [King John’s] rights and that the concession had been made on the express understanding that the islands belonged to no one.” pp. 45-46. Or, in other words, that the “islands belonged to no” Christian ruler (dominator).

21. Christian potentates had no interest whatsoever in the "unbaptized" Indigenous peoples' opposition to a Christian monarch granting a Christian lord the claimed right to establish Christian domination ("conquest") over their non-Christian lands. Disregarding the viewpoint and existence of the "unbaptized" was integral to their dehumanization.³³

22. We see the same religious assertion being made wherever Christendom carried the Doctrine of Discovery and Domination. No matter where in the world one decides to look, this thinking prevailed in the colonizing actions of Christendom. This thinking continues *in veiled form* right up to the present.³⁴ The United States is no exception; to this day it traces its organic laws to this Christian oriented thinking during the 'Age of Discovery,' as do Canada, Australia, and New Zealand.³⁵

23. The evidence in the U.S. context is found in a book published in 1877, entitled, "*The Federal and State Constitutions, Colonial Charters, and other Organic Laws of the United States, Part 1*,"³⁶ compiled under an order of the U.S. Senate by Benjamin Perley Poore, Clerk of Printing Records. The book was published by the U.S. Government Printing Office. In a letter to Senator Henry B. Anthony, Mr. Poore said:

24. "Before preparing an accurate and complete edition of the Organic Laws of the Union and of the States, the advice of distinguished historians and jurists was sought and followed in maturing the plan which received the sanction of the Committee of Public Printing..."

25. The Perley book is an authoritative source for the history of the organic laws of the United States and the various States. Under "Florida," for example, the first two original organic documents listed are: "Prerogatives granted to Christopher Columbus—1492" and "Bull of Pope Alexander conceding America to Spain—1493."³⁷ Under "California," the first document listed is "The Treaty of Guadalupe Hidalgo—1848.*" The accompanying note states: "California was first discovered by the Spaniards, in 1542, and they began to establish missions there in 1769."

³³ Francis Lieber provides the illustration: "Peschal, in his History of the Age of Discoveries, relates, on distinct authorities, that the Portuguese discoverers trained dogs to track the negroes, and used torture to force captives to betray the hiding-places of their comrades. Barros gives the account of an expedition in 1444. When the mariners had suffered from storm and feared shipwreck, 'at length,' he says, 'it pleased God, the rewarder of all good deeds, to give them, after so many sufferings in His service, a victorious day, glory for so many hardships, and compensation for their expenses, for there were captured, men, women, and children, one hundred and sixty-five pieces.' [emphasis added] This terrible simplicity is symbolical, and so is the following of the year 1823. The writer say in Rome a girl amusing a child in her arms by the contortions of some ten or fifteen chafers [beetles] spiked on the knitting-needle. When expostulations at this cruelty were made, the girl in innocent amazement said, *Ma non é roba battizata*. She meant: it is unbaptized stuff." Lieber's Misc. Writings, p. 24.

³⁴ See generally *The Sociology of Colonies*.

³⁵ See generally Robert J. Miller, Jacinta Ruru, Larissa Behrendt, and Tracy Lindberg, *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies*, Oxford University Press, 2010.

³⁶ The book can be found through Googlebooks.

³⁷ See also Henry Steele Commager, ed., *Documents of American History* (Sixth Ed.) New York: Appleton-Century-Crofts, Inc., 1968. Commager begins his book with "1. Privileges and Prerogatives Granted to Columbus. April 30, 1492" and, "2. Papal Bull *Inter Caetera*. May 4, 1493."

26. The “discovery” of California is traced back to the same originating documents as Florida, the “Prerogatives granted to Columbus” and the “Bull of Pope Alexander” of 1493. Another work, *Laws of Mexico*, by Frederick Hall, opens with “Possession and Early Government of Mexico by Spain.” “§1. Grant by the Pope to the Crown of Spain” and “§2. Right by Discovery.” The text of the two sections reads:
27. “§1. Grant by the Pope.—For the purposes of overthrowing heathenism, and advancing the Roman Catholic religion, Alexander VI issued a bull in 1493, granting to the whole of Castile the whole of the vast domain discovered, or to be discovered, between the north and south poles, or so much thereof as was not considered in the possession of any Christian power. ‘*Ut fides Catholica et Christiana religio nostras præsertim temporibus exaltetur, etc. , ac barbaræ nationes deprimentur, et ad fidem ipsam reducantur,*’³⁸ was the language of the Bull.”³⁹
28. “§2. Right by Discovery.—But Spain did not rest her title alone on the grant of the Pope. She with other European nations also claimed and exercised the right of discovery, a right which they deemed sufficient to maintain a title to any part of the globe. Under such views, the rights of the native Mexicans to their own soil became subordinate to the dominion of the discoverer and conqueror.”
29. The U.S. states of Texas, New Mexico, Arizona, Nevada, Colorado, Utah, and Idaho trace to the same organic law sources, as does the vast area of the Louisiana Territory.⁴⁰
30. In 1954, the United States government, in the case *Tee-Hi-Ton Indians v. United States*⁴¹, argued before the U.S. Supreme Court on the basis of Christian discovery and domination found in U.S. fundamental organic law that the Tee-Hit Ton Band of Indians was not entitled to monetary compensation for a federal taking of their timber lands.⁴²
31. The U.S. government argued that “the Christian nations of Europe” “discovered” the lands of “heathens and infidels.”⁴³ In support of its argument, the U.S. cited a papal bull from 1344 authorizing the domination and colonization of the Canary Islands,⁴⁴ and papal bulls of 1493 after the first voyage of Christopher Columbus to the Caribbean.

³⁸ The Latin translates: “Among other works well pleasing to the Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the Catholic faith and Christian religion be exalted and everywhere increased and spread, that the health of souls be cared for and that barbarous nations be dominated [deprimantur] and brought to the faith itself.”

³⁹ Steven Newcomb, “The UN Declaration on the Rights of Indigenous Peoples and the Paradigm of Domination,” *Griffith Law Review*, Volume 20, No. 3, 2011, pp. 5997-98. Revealing a similar pattern, the Latin version of the papal bull of May 3, 1493 states: “...sub dominio actuali temporali aliquorum dominorum christianorum constitute non sint...” which translates to lands “not under the domination of any Christian dominator...”

⁴⁰ E. N. Van Kleffens, *Hispanic Law until the end of the Middle Ages: With a note on the continued validity after the fifteenth century of medieval Hispanic legislation in Spain, the Americas, Asia, and Africa*, Edingurgh University Press, 1968, pp. 266-78. (bold emphasis added).

⁴¹ *Tee-Hit-Ton Indians v. United States* 348 U.S. 272 (1955).

⁴² The U.S. government legal brief can be found at Westlaw: 1954 WL 72831 (U.S.).

⁴³ *Id.* At pt. 7, at *13 A.

⁴⁴ Wilhelm G. Grewe, *The Epochs of International Law*, trans. and rev. by Michael Byers, New York: de Gruyter 2000, p. 231. “Even the dispute about the Canary Islands was engaged in on this basis: as early as 1344 Pope Clement VI had conveyed those islands upon the great-grandson of Alphonse the Wise of Castile, Don Luis de la

32. The U.S. government further argued that because of Christian discovery it had no obligation to compensate the Tee-Hit-Ton Indians for a federal taking of their timber. "Discovery" by "Christian people," said the U.S. government, resulted in the Christian nations possessing a right of "ultimate dominion" over those lands. The U.S. cited the 1823 *Johnson v. M'Intosh* ruling that "discovery" by the "Christian nations of Europe" had left the original Indian nations of the continent with a mere possessory "right of occupancy," subject to the ultimate dominion (right of domination) of the first discoverer. The United States went so far as to cite passages from the Old Testament, including Genesis 1:28.⁴⁵ The U.S. Supreme Court ruled in favor of the U.S. government.⁴⁶

The Nineteenth Century Colonialism in the International Law of Christendom

33. In 1843, slightly more than a century before the *Tee-Hit-Ton* decision, U.S. Department of State acknowledged that the term "Christendom" had been used in the 1842 Treaty of Washington.⁴⁷ This demonstrates that in the nineteenth century the *religious* background thinking identified in this paper was very much active at the level of diplomacy and international relations between what have been called "the States of Christendom," "all Christian states," or "all the powers of Christendom," and commonly termed "the Family of Nations."⁴⁸

Cerda, as a fief. It was these rights, passed over to it, which the Crown of Castile claimed for itself in 1479." This demonstrates the multi-generational nature of the Christian European claims to non-Christian territories in complete disregard for the perspective, culture, and existing life-ways of the non-Christian nations and peoples.

⁴⁵ Ibid. The U.S. legal brief also cites a passage from the book of Psalms.

⁴⁶ *Tee-Hit-Indians v. United States* 348 U.S. 272 (1955). In its ruling the U.S. Supreme Court cited to Henry Wheaton's *Elements of International Law*, specifically, Chapter IV on "Property." By doing so, the Court cited to the context of Christendom (see footnote 6 *supra*) to the 'Age of Discovery,' and to relations between what Wheaton termed "the States of Christendom." In his *Elements*, Wheaton cited to the papal bull of 1493, to various charters of England that used the terms "heathens" and "infidels," and to *Johnson v. M'Intosh*, which distinguished between "Christian people" and "heathens." Wheaton placed italics on the word "*Christian*" for emphasis just as Chief Justice John Marshall had placed italics on "*Christian people*" in the *Johnson* decision.

⁴⁷ *The Diplomatic and Official Correspondence of Daniel Webster While Secretary of State*, New York: Harper and Brothers, 1848, In a report from Secretary of State Daniel Webster to President Tyler in 1843, Webster wrote: "That the British government saw in it an attempt, on the part of the government of the United States, to give a practical effect to their repeated declarations made against that [slave] trade, and recognized with satisfaction an advance toward the humane and enlightened policy of all Christian states, from which they anticipated much good." (p. 159). The context for Webster's mention of "all Christian states," was the use of the phrase "the States of Christendom" in the 1842 Treaty of Washington. This is revealed in a letter from U.S. ambassador Lewis Cass to His Excellency, Mr. François Guizot, French ambassador to London, dated October 13, 1841. "In a communication from the successor of Lord Aberdeen [British Secretary of State for Foreign Affairs] to Mr. Stevenson [American ambassador at London], dated October 13, 1841, the views and determinations announced in the first are confirmed; and Lord Aberdeen thus states the ground upon which rests this pretension to search American vessels in time of peace: 'But the undersigned must observe, that the present happy concurrence of *the States of Christendom* in this great object (the suppression of the slave trade), not merely justifies, but renders indispensable, the right now claimed and exercised by the British government;" that is to say, the right of entering and examining American vessels, to ascertain their nationality." (emphasis added) (p. 177) The Introduction to *The Diplomatic and Official Correspondence of Daniel Webster While Secretary of States* also uses the phrase "all the great powers of Christendom" at pp. xxii-xxiii.

⁴⁸ These are various terms found in Wheaton and other international law sources from the nineteenth century.

34. *Webster's New International Dictionary of the English Language*, published in 1923, states, under "Family of Nations": "—f. of nations. Internat. Law, an aggregate of states, which, as a result of their antecedents, have inherited a common civilization, and are at a similar level of moral and political opinions. 'The term may be said to include the Christian nations of Europe and their offshoots in America, with the addition of the Ottoman Empire, which was declared by the Treaty of Paris of 1856 to be admitted to the 'concert of European' [sic] (c.f. CONCERT OF EUROPE). Within this charmed circle, to which Japan also has now established her claim to be admitted, all states, according to the theory of international law are equal. Outside of it no state, be it as powerful and civilized as China or Persia, can be regarded as a normal international person." Thus, it was as of the 1856 Treaty of Paris that a transition occurred whereby a non-Christian state was admitted into the Christian Family of Nations. This is when a shift away from the specific term "Christendom" began. It would be a serious mistake to conclude that such a shift in terminology erased the centuries of conceptual development that had taken place in the context of Western Christenedom.⁴⁹
35. Christian European colonialism was still in full bloom at the Berlin Conference of 1884, which was convened to divide the continent of Africa between the major Western powers of the time. The Berlin Conference of 1898, five hundred years after Vasco de Gama's voyage to India, was also of great importance in the partitioning of Africa.

European and Indigenous Versions of Intertemporality

36. In 1928, in the arbitration case *Netherlands v. U.S.*, the European Intertemporal doctrine was expressed as "the lawfulness of an action must be determined according to the law existing at that time and not according to the law when a subsequent dispute arises."⁵⁰ In the *Palmas Arbitration* case, C.J. Huber stated: "a juridical fact must be appreciated in the light of the law contemporary with it." (*Netherlands v. U.S.*, 1928).⁵¹ However, because intertemporal law is

⁴⁹ See Wilhelm G. Grewe, *The Epochs of International Law*, 2000, Chapter Eight: "The Institutions of the Law of Nations for the Formation of the Territorial Order in the Age of Discoveries." "The Spanish tried to save a single element of the dissolving power of imperial and papal universalism: the feudal power of the Pope to dispose of uninhabited territories and lands inhabited by heathens. The division of the world by the papal lines of demarcation was based on this power, which gave the first phase of European colonization its particular character. The right of occupation, which had already been developed by Bartolus and other jurists, took on a special form, changed by the condition of the new world situation. It was transformed into the right of discovery—the right to take possession [of heathen lands] through a symbolic act alone." p. 229.

⁵⁰ L.C. Green and Olive P. Dickason, *The Law of Nations and the New World*, 1989. In the Introduction by Timothy J. Christian, p. viii and footnote 3: "In adopting this approach, Professor Green used the same method of analysis as was employed by Judge Huber, a sole arbitrator dealing with competing claims by the United States and the Netherlands over the sovereignty of an East Indian Island, in *The Island of Palmas* (1928) 2 U.N., *Reports of Int'l Arb. Awards*, 831. He held that the effect of the discovery of the Island by Spain was ' . . . to be determined by rules of international law in force in the first half of the 16th century."

⁵¹ The *Island of Palmas* case is at: http://untreaty.un.org/cod/riaa/cases/vol_II/829-871.pdf. The Arbitrator Max Huber (Switzerland) stated in part: "It is admitted by both sides that international law underwent profound modifications between the end of the Middle-Ages and the 19th century, as regards the rights of discovery and acquisition of uninhabited regions or regions inhabited by savages or semi-civilised [sic] peoples. Both Parties are also agreed that a juridical fact must be appreciated in light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled. The effect of discovery by Spain is therefore to be determined by the rules of international law in force in the first half of the 16th century—or (to

European in conception,⁵² it is more precise to express it as follows: The lawfulness of a policy or action in the past is to be interpreted according to the *European* law existing at that time and not according to a present day legal standard.”

37. Those who today apply archaic Christian European standards to Indigenous nations and peoples ought to be called upon to identify any contemporary basis upon which originally free and independent nations and peoples may legitimately continue to be considered subject to such standards without their permission. A simplistic answer might very well be the UNPFII’s subtheme: “past conquests.” But this presupposes that the past dominations called “conquests” do have continuing effects such that they are *continuing acts* of domination.
38. Despite several efforts by Indigenous nations and peoples to explicate the historical record from an Indigenous standpoint, an effective debate about the historic actions and continuing effects of Western Christendom has not yet been fully developed.⁵³ Such an Indigenous response is a work in progress, of which this paper and the Preliminary Study of the Doctrine of Discovery are a part. We want to make certain that the phrase “past conquests” in the subtheme of the 11th Session of the UNPFII does not inadvertently work to silence our efforts as Indigenous Nations and Peoples to question the legitimacy of the *continuing dominating effects of past actions and conceptions* of Western Christendom.
39. Under European international law standards, “past conquests” are considered to result in an Indigenous status and context of “conquest” that is not open to question or challenge. But again, this presupposes that we as Indigenous nations and peoples are somehow obligated to accept the concepts that emerged from an archaic Christian European perspective and obligated to accept an intertemporal law that is European origin.

take the earliest date) in the first quarter of it, i.e. at the time when the Portuguese or Spaniards made their appearance in the Sea of Celebes.” p. 845. Huber’s important discussion of “territorial sovereignty” is at pp. 838-840 See also Howard Berman, “Perspectives on American Indian Sovereignty and International Law, 1600 to 1776,” in *Exiled in the Land of the Free*, ed. by John Mohawk and Oren Lyons, 1992, Santa Fe: Clear Light Publishers. p. 127.

⁵² Antony Anghie, “Imperialism, Sovereignty, and the Making of International Law,” 2004, p. 35. Quoting J. H. W. Verzijl, as stating in his 1968 book, “International Law in Historical Perspective, that “...the actual body of international law, as it stands today...is the product of the conscious activity of the European mind, but has also drawn its vital essence from a common source of beliefs, and in both of these aspects it is mainly of Western European origin.”

⁵³ Garcilosa De La Vega El Inca, *Royal Commentaries of the Incas and the General History of Peru (Abridged)*, translated by Harold V. Livermore, Edited with an Introduction, by Katherine Spalding (Indianapolis: Hackett Publishing, 2006). An example of such a brilliant response is found in the statement by the Inca Atahualpa to the Spaniards after he heard a speech delivered on the basis of the Requerimiento (the Requirement): “I am free and owe tribute to no one; nor do intend to pay it, for I recognize no superior and owe no king. I would gladly be the emperor’s friend, since he shows his great power by sending so many armies to such distant lands. Nevertheless when you say I should obey the pope, I disagree; for a man who tries to give his friends other people’s property and bids me give up the kingdom I have inherited, though I do not even know him, shows he is out of his mind. And as to the part about changing my religion when I know it is most sacred, it would be cowardly and ignorant on my part to question what pleases me so well and is approved by ancient tradition and by the witness of my ancestors.” pp. 105-06.

40. Along these lines, Lord Acton once said that this kind of principle was like asking from the viewpoint of the Inquisitors, rather than the viewpoint of the 'heretic,' whether the torture and burning of the 'heretic' was just.
41. Terms such as "conquest," "conquer," "conquered," and "past conquests" have been used from a dominating perspective in an attempt to overcome permanently the premise of an original and rightful free and independent existence for our nations and peoples.

The Global Scope of the Doctrine of Discovery and Domination

42. Chapter IV, § 165, of Henry Wheaton's *Elements of International Law* (1836) contains a margin note that reads: "Conquest and discovery confirmed by compact and the lapse of time." The text of §165 reads in part: "The title of almost all the nations of Europe to the territory now possessed by them, in that quarter of the world, was originally derived from conquest, which has been subsequently confirmed by long possession and international compacts, to which all the European States have successively become parties."
43. Wheaton's comprehensive understanding of the global scope of such notions is revealed as he continues in § 165 of his *Elements*: "Their [the States of Christendom] claim to the possessions held by them in the New World, discovered by Columbus and other adventurers, and to the territories which they have acquired on the continents and islands of Africa and Asia, was originally derived from discovery, or conquest and colonization, and has since been confirmed in the same manner, by positive compact." By this one concise statement, Wheaton documents the global scope of the doctrine of discovery and domination; the 'New World' encompasses the entirety of the Western Hemisphere; to this we must add the continents and islands of Africa and Asia, starting with Vasco de Gama's voyage to India on behalf of Portugal in 1498. The English colonization extends the scope of discovery and domination to Oceania (Australia and New Zealand) and the Pacific (Hawai'i, Tahiti, etc.). The sweep of the doctrine of discovery and domination is global in scope when we consider the colonial voyages and justifications of Portugal, Spain, France, Holland, Sweden, and Russia, and the successor political systems of any of those powers in places distant from their home countries.⁵⁴
44. The UNPFIL's sub-theme of "redress for past conquests" seems predicated on the idea that Indigenous nations and peoples may continue to be *legally* and *legitimately* dominated by contemporary successors to the potentates of Western Christendom. However, in order for such a judgment to hold together, the free existence and perspectives of Indigenous nations and peoples must be *conceptually negated* in favor of a dominating Christian European conceptual framework and standard of judgment.
45. More peculiarly, it requires an unspoken belief that the inherent *right* of our Indigenous nations and peoples to *maintain* a free and independent status has permanently disappeared, by reason of a prior and self-proclaimed right of Christian European domination.⁵⁵

⁵⁴ See generally *Creation of Rights of Sovereignty Through Symbolic Acts*, 1938.

⁵⁵ This is well exemplified by the "requierimiento" or "requirement," which was "a Spanish legal document that informed the [Indian] people they [the Spaniards] met of the Spaniards' holy right to conquer [dominate] them—a right granted them by the Pope in exchange for the imposition of Christianity." Garcilosa De La Vega El Inca, *Royal Commentaries of the Incas and the General History of Peru (Abridged)*, translated by Harold V. Livermore, Edited

46. Yet there is nothing that obligates us as Indigenous nations and peoples to accept the senseless presumption that our free and independent ancestors were ever or that we are now *legitimately* subject to the concepts, claims, and assertions of Western Christendom. For our part we have no obligation to accept the claim that our ancestors somehow ‘lost’ their inherent *right to maintain an existence free and independent of domination*, or their right to their lands, territories, and resources.
47. Highly conscious as we are of the original free and independent existence and status of our ancestors, it is our judgment that what are being termed ‘past conquests’ were *illegitimate assertions of a right of Christian European domination*, the dehumanizing consequences of which we live with to this day. This circumstance is what results in the need and desire on our part to work in the contemporary international arena toward the development of a human rights framework that recognizes our inherent rights as originally free nations and peoples to end the legacy of domination that has inflicted and continues to inflict great suffering and death upon our nations and peoples.
48. Emmerich Vattel, insightfully noted in his *The Law of Nations* that a desire to be free of domination is rooted in the deepest recesses of human nature: “If an unjust and rapacious conqueror subdues a nation, and forces her to accept hard, ignominious, and insupportable conditions, necessity obliges her to submit; but this apparent tranquility is not peace; it is an oppression which she endures only so long as she wants the means of shaking it off, and against which men of spirit arise on the first favorable opportunity.”⁵⁶
49. European intertemporal law fails to properly account for the original existence and law systems of Indigenous nations and peoples. European intertemporal law is expressed from the perspective of those responsible for the domination; it provides no possibility whatsoever that those who have been subjected to domination will *ever* be able to free themselves.⁵⁷ To

with an Introduction, by Katherine Spalding (Indianapolis: Hacket Publishing, 2006) p. 100. See John Eppstein, *The Catholic Tradition of the Law of Nations*, 1935, p. “Changes of overlords or sovereigns and of the frontiers between their dominions ought to be attended by no detriment to the communes or clans, the villages or towns or indeed any of the smaller groupings of human beings which have their roots in nature or in necessity. Hence it appears that the respect and protection of native communities is among the first duties of the new rulers.” p. 411. Eppstein goes on to call the “overlords” or “sovereigns” as “the supreme authority.” All three terms involve domination as against those who were living free and independent prior to a right of domination being claimed and asserted.

⁵⁶ Quoted in *The Lessons of Terror: A History of Warfare Against Civilians*, Caleb Carr (2003), (The page after ‘Table of Contents’).

⁵⁷ We see the presumption of domination in the following from the Island of Palmas arbitration case: “International law in the 19th century, having regard to the fact that most parts of the globe were under the sovereignty of States members of the community of nations, and that *territories without a master* had become relatively few, took account of a tendency already existing and especially developed since the middle of the 18th century, and laid down the principle that occupation, to constitute a claim to territorial sovereignty, must be effective, that is, offer certain guarantees to other States and their nationals.” (emphasis added) pp. 845-46. Territories without a master, is a euphemism for territories originally free and existing without Christian European dominator (master). The “continuing impacts” on peoples termed Indigenous are the result of the actions and policies of the presumed mastery over them by states, and corporations by permission of “the ‘Master States’”. In the 1648 Treaty of Munster, we find than acknowledgment of the dominating term “Master” (“Lords”) in the

counter this, we hereby express a concept of *Indigenous* intertemporal law: “The lawfulness of an act by the nations of Christendom in the past in the traditional territories of our nations is to be interpreted according to our Indigenous perspective and laws existing at that time, and *not* according to the foreign and domineering conceptions of Western Christendom.”⁵⁸

50. This expression of an Indigenous intertemporal law overcomes the *a priori* assumption that our nations and peoples are subject to the foreign and supposedly superior conceptions traced to Western Christendom. This expression operates on the assumption that we never were and never will be legitimately subject to the self-serving perspective of Western Christendom. It also is a counter to the claim that the nations of Christendom were able to create continuing rights of sovereignty and dominion in our territories by performing symbolic and metaphorical acts.⁵⁹
51. The Preamble to the UN Declaration on the Rights of Indigenous Peoples provides a standard by which to critique and challenge the UN Permanent Forum’s subtheme of “past conquests” as an aftermath and perpetuation of the dominating perspective of Western Christendom. The Declaration’s Preamble reads: *Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust.” European intertemporal law is one such dominating doctrine rooted in the claimed superiority of Christian Europeans over non-Christian European nations and peoples. It is thus to be rejected as “racist, scientifically false, legally invalid, morally condemnable, and socially unjust.” A more precise UNPFII subtheme ought to be “redress for past and continuing dominations.” The “redress” we have in mind, however, does not include a process whereby we are expected to become “reconciled” to the dominating perspective and conceptual framework of states (“reconciliation”).

Conclusion

52. As stated at the outset of this paper, what has impacted and continues to impact Indigenous nations and peoples is not so much the idea of “discovery,” but the centuries of treating the domination and dehumanization of originally free nations and peoples as legitimate. The Doctrine of Christian Discovery and Domination refers to patterns of thought and dogma used to legitimize the domination of originally free and independent nations and peoples. It is in this context that the Permanent Forum ought to discuss Articles 28 and 37 of the UN Declaration on the Rights of Indigenous Peoples.
53. Article 28 paragraph 1 of the Declaration states: “Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally

phrase: “Their Lordships the States General of the United Provinces of the Netherlands.” We also find “the said Lords the King [of Spain] and States, respectively...”

⁵⁸ See *Worcester v. Georgia* 31 U.S. 515 (1832). This is similar to the standard expressed by the U.S. Supreme Court in *Worcester* that the terms of Indian treaties are to be interpreted as the Indians understood them when they were made. See also *U.S. v. Winans* 198 U.S. 371, 25 S. Ct. 662, 49 L. Ed. 1089 (1905).

⁵⁹ See generally *Creation of Rights of Sovereignty Through Symbolic Acts*, 1938. Also, *The Epochs of International Law*.

owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.” An astute reader will notice that “conquest” and “past conquests” are not once mentioned in this text, nor are those terms found in paragraph 2 of Article 28: “Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.”

54. Article 37 of the UN Declaration pertains to treaties with Indigenous nations. “1. Indigenous peoples have the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and respect such Treaties, Agreements and other Constructive Arrangements.” “2. Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of Indigenous Peoples contained in Treaties, Agreements and Constructive Arrangements.”
55. Neither Article 28 nor Article 37 of the UN Declaration acknowledge that nations and peoples now termed Indigenous were originally existing free of domination. In other words, the text of the two Articles scheduled to be discussed at the 11th Session of the UNPFII provide an opportunity to address the background context of domination and dehumanization.
56. In the context of the British Crown, and Canada, a discussion of Indian treaties made with ‘the Crown,’ when viewed from the perspective of ‘the Crown,’ leads to the dominating conclusion that, by treaty, Indian nations’ surrendered to ‘the Crown.’ In support of this interpretation we point to the three volume set of books, “Canada: Indian Treaties and Surrenders.”⁶⁰
57. In the context of the United States, in Volume VII of “The Public Statutes at Large of the United States of America,” published in 1846, we find: “Treaties Between the United States and the Indian Tribes,” edited by attorney Richard Peters. In that volume, prior to providing any of the treaties between the United States and Indian nations, Peters includes an introductory section titled, “General principles recognized by the Supreme Court of the United States in relation to the Indian tribes, &c.”
58. To introduce the general principles, Peters wrote: “The editor of this work has considered it obligatory upon him to exhibit, as preliminary matter to the treaties between the United States and the Indian tribes, the general principles which have been recognised [sic] by the Supreme Court of the United States in relation to the Indian tribes, the Indian title to the lands occupied by them, and the effect of treaties with them upon their claims to these lands, or the claims of others under Indian grants.” He continued: “In the case of *Johnson & Graham’s Lessee v. M’Intosh*, 8 Wheaton’s Reports, 543, 5 Condensed Reports, 515, Mr. Chief Justice Marshall, who delivered the opinion of the court, said:...” Peters then reproduces the *Johnson v. M’Intosh* ruling, nearly in its entirety, as the context for interpreting and understanding treaties made by the United States with Indian nations and peoples.⁶¹

⁶⁰ *Canada: Indian Treaties and Surrenders*: From 1680 to 1890.—In Two Volumes. Vol. I., Ottawa: Printed by Brown Chamberlin, Printer to the Queen’s Most Excellent Majesty, 1891. See also, Volumes II (published in 1891) and Volume III (published in 1912).

⁶¹ Volume VII of the U.S. Congressional Statutes at Large is available at Googlebooks: <http://books.google.com/books?id=nEYFAAAAYAAJ&pg=PA1&dq=u.s.+statutes+at+large+johnson+v.m'intosh&hl=en&sa=X&ei=ICIVT5OnAoWoiAKDlun8AQ&ved=0CEkQ6AEwBA#v=onepage&q&f=false>

59. Finding treaties between the United States and American Indian nations published by the U.S. government in the context of *Johnson v. McIntosh* in the U.S. congressional Statutes at Large brings us full circle back to the Doctrine of Christian Discovery and Domination, and the papal bulls of the fifteenth and sixteenth centuries. This documents that what the U.S. Supreme Court called an “asserted” right of “ultimate dominion” (right of domination) by “Christian people” over non-Christian lands and peoples is the accurate context for a discussion of those treaties relative to Article 38 of the UN Declaration on the rights of Indigenous Peoples.
60. In our view, the phenomenon of domination we have identified afflicts the entire planet. Our concerns go far beyond a focus on nations and peoples termed ‘indigenous.’ Our compassionate concern is for Mother Earth and All Living Things. Also, the current trends toward neo-medievalism⁶² and neo-feudalism seem to be resuscitating the dominating patterns of thought and behavior found in the papal bulls of the fifteenth and later centuries, resulting in the rapid rise of a global digital totalitarian state. Despite this, we continue to maintain our cultural and spiritual values bequeathed to us by our ancestors, rooted in thousands of years of free and independent existence.
61. The Permanent Observer Mission of the Holy See to the United Nations, through correspondence by Nuncio Migliore in 2006, has stated its view that the papal bull of May 4, 1493 has been “abrogated.” Our response to the Holy See in English and Latin pointed out that the Holy See has yet to publicly acknowledge that in the fifteenth and sixteenth centuries it repeatedly issued decrees that called for the domination and dehumanization of our non-Christian ancestors. Today, we are attempting to rectify the aftermath of the many centuries of colonization and subjugation that those decrees set into motion globally, the consequences of which we to live with to this day.
62. The issue we are raising goes far beyond the *Inter Caetera* papal bull of May 4, 1493 issued for “the propagation of the Christian empire” (“*christiani imperii*”). What have never been “abrogated” are the enduring *conceptual and behavioral patterns* of domination and dehumanization set into motion by the language of the Holy See to “invade, capture, vanquish, and subdue, all Saracens and pagans,” “to reduce their persons to persons to perpetual slavery, and “to take away all their possessions and property” have never been “abrogated.” What has yet to be rectified and ended are the resulting *kinds* of conceptual and behavioral patterns of domination that continue to this day against Indigenous nations and peoples, resulting in the myriad of problems that we face.
63. Therefore we maintain our call for the pope to formally revoke the *Inter Caetera* papal bull of May 4, 1493, as well as any other such documents by which various popes promulgated language and ideas of domination and dehumanization, while pretending to the authority to grant rights of domination over the lands of non-Christian nations and peoples throughout the planet, that is, originally free nations and peoples that are today commonly termed “Indigenous.” We hereby recommend the UNPFII extend the work on the Doctrine of Discovery by convening an Expert Group Meeting on the past and present impacts of domination and dehumanization on Indigenous peoples, and particularly on Indigenous women as manifested in forms of conceptual and behavioral violence against them.

⁶² Parag Khanna, “The Next Big Thing: Neomedievalism,” May/June 2009. www.foreignpolicy.com/.../the_next_big_thing_neomedievalism.

64. We acknowledge the actions taken by the Episcopal Church in 2009, the Anglican Church of Canada in 2010, and the World Council of Churches in 2012, repudiating the Doctrine of Christian Discovery and domination.

65. Recommendation: That an International Study be made by the UNPFII on the effects of the international construct known as the Doctrine of Discovery” upon the health, physical, psychological, social, well-being, human and collective rights, lands, resources, medicines, titles to such lands, resources, medicines, to be submitted to the UNPFII in 2014 as an addendum to the UN Year of Indigenous Peoples, with recommendations addressing the issues of the discoveries and findings of this Study.